

Response to Arguments

Applicant's arguments filed 02/26/10 have been fully considered but they are not persuasive.

Applicant's arguments are noted, however, the Examiner notes that the present claims are directed to product by process claims, and the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985); or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979). In the present case, the examiner is unable to determine any unexpected and/or distinctive characteristics of the claimed final product. Applicant's attention is called to the teachings of Ebert with respect to the properties desired by the Applicants. Namely, a chewable capsule having normal chewing consistency over an extended period of time (stability), and a chewable capsule that does not impart unpleasant taste (page 1, 2nd paragraph; and page 1, lines 35-37). See also Lech at columns 2-3 and 7.

At least for the above reasons, the 103(a) rejections of record are maintained.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. TRAN whose telephone number is (571) 272-0606. The examiner can normally be reached on M-F 8:30 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax can be reached on (571) 272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/S. TRAN/
Primary Examiner, Art Unit 1615